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RECORD OF ORAL HEARING

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

EX PARTE LUNDY LEWIS

Appeal 2009-000882
Application 09/577,231
Technology Center 2400

Oral Hearing Held: June 10, 2009

Before LEE E. BARRETT, LANCE LEONARD BARRY, and
JEAN R. HOMERE, *Administrative Patent Judges*.

APPEARANCES:

ON BEHALF OF THE APPELLANT:

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1 The above-entitled matter came on for oral hearing on Wednesday,
2 June 10, 2009, at The U.S. Patent and Trademark Office, 600 Dulany Street,
3 Alexandria, Virginia, before Kevin Carr, Notary Public.

4
5 JUDGE BARRETT: Back on the record.

6 MR. ALI: In this case, we have several independent claims. They're
7 all subject to a 103 rejection, primarily based on Bhoj and Yemini.
8 Independent Claims 13, 27, and 49 are also -- reference Taghadoss is also
9 relied upon in that context.

10 But the main -- I think that what Taghadoss has relied upon is kind of
11 secondary here. So, I just kind of want to focus on Bhoj for a second, and
12 the main distinction that we went to address here is what's being done in
13 response to the state of the service changing.

14 So, as discussed earlier, you know, you might have a service that's
15 supported by many -- you know, in this case, one or more network
16 components, and based on information that's coming out of those
17 components, you might determine that your state of the service is either
18 degraded or -- or in some -- in some way changed, and then the key being, in
19 terms of distinguishing over the references, is that -- what happens after that
20 service -- state of the service changes, so the feature relating to when the
21 state of the service changes, determining cause in the change of the state,
22 where basically once you determine that the state of the service changes,
23 you're going to go back in and look at the network component data that's
24 coming -- that, you know, you determined that the state of the service
25 changed based on that.

1 In other words, responsive to the state changing, you're going to go
2 back in and look at those devices to kind of do this auditing and determine
3 where the problem may have arose.

4 So, the key thing in terms of the references is -- is really the
5 combination of these references. It doesn't -- it doesn't quite work.

6 So, Bhoj -- just to set it up, Bhoj relates to this federated management
7 system.

8 So, you might have -- a given customer might have different services
9 provided by different suppliers, and they're in different, you know,
10 management domains, so -- but the problem being -- is that a service
11 provided in one of those management domains might depend on network
12 components that are -- that are resident in one of the other management
13 domains, and so, to protect proprietary information or provide security or
14 that sort of thing, Bhoj relates to this federated system where basically it's
15 kind of a push model, where the data is coming up out of the management
16 domains and selectively provided to other management domains in a manner
17 that allows you to determine the service level based on components that you
18 can't necessarily see.

19 So, the key here -- it's right here in the abstract -- is Bhoj says that this
20 service management system allows you to determine service level in
21 accordance with a pre-determined service level agreement without giving the
22 data service system complete access to the second data service system.

23 So, the problem here is that, you know, if you have a degraded quality
24 of service determination for any reason, you, for some reason, determine
25 that --

1 For example, column 11, lines 41 through 54, where it says the
2 plug-ins hide the details of an underlying data service system and
3 measurement protocols from the service manager, new measurements are
4 easy to be added to the system.

5 Okay.

6 So, yeah, it makes it easy to add new measurements to the system, but
7 again, it's only going one way.

8 Measurements come out of the devices, go into the service
9 management system, and you can determine service level based on that, but
10 once you determine that you're not in compliance or you need to go back in
11 and kind of audit and determine where the problem was, Bhoj hides the
12 details of the underlying system, so you can't go back in and -- and look at
13 those specific component data. All you have is this abstracted view.

14 JUDGE BARRETT: So, you're saying that it doesn't meet this thing
15 about determining a cause of the change?

16 MR. ALI: Right.

17 JUDGE BARRETT: Where is that in the brief? Where is that
18 argument in the brief?

19 (Pause.)

20 MR. ALI: We mention the cause of the changes on page 12, kind of
21 tying it into the context of what's described earlier.

22 I mean, essentially, pages 8 through -- 7 through 11, kind of
23 discussing at a high level, you know, the reasons why Bhoj doesn't allow for
24 you to go back and look at that data, and then I guess we kind of conclude

1 on page 12 that that doesn't allow you to -- to go back in and determine the
2 cause.

3 So, in any event, Yemini describes, you know, in some degree of
4 detail, fault diagnosis and -- and determining cause and effect, but again, I
5 would just emphasize that because of the fact that Bhoj doesn't allow you to
6 go back in and look at that type of data, that, you know, combination with
7 Yemini fails, just simply because you wouldn't be able to -- you wouldn't be
8 able to determine operational characteristics of network components, you
9 wouldn't be able to construct database queries to do the same, you wouldn't
10 certainly be able to request changes to the network components, because of
11 the fact that the detail -- you don't even know what those network
12 components are, let alone how to -- how to configure them or change the
13 parameters of them.

14 JUDGE BARRETT: I just don't remember that argument being made
15 that -- I thought the argument was that --

16 MR. ALI: Well, the argument --

17 JUDGE BARRETT: You just argued that Bhoj --

18 MR. ALI: I think the argument is mainly focused on features relating
19 to selection of network components.

20 JUDGE BARRETT: Yes. Isn't all that -- that's what I remember --

21 MR. ALI: Right.

22 JUDGE BARRETT: -- from the brief.

23 MR. ALI: Let me just tie it together.

24 You know, in order to determine the state of the service, the way that
25 we're doing it is monitoring the number of components and then determining

1 your state of the service based on that, and then, again, as I said before,
2 when something changes, you're going back in.

3 The selection is necessarily missing, because Bhoj doesn't allow you
4 to go back in, doesn't allow the service management system to select
5 components. It doesn't even allow them to see components. It's all hidden
6 by these plug-ins.

7 So, the plug-ins manage the data that's coming out of the devices and
8 just kind of give you the -- the parameters you might be looking for. It
9 doesn't tell you what devices it's coming from or anything like that.

10 There's no way to select the devices that you're -- that you're going to
11 be looking at, and again, that ties back into what's coming later in terms of
12 going back -- I just wanted to emphasize that last feature, because -- to
13 clarify how you might want to go back in later on to look at those specific
14 devices, but in the brief we emphasize the feature of selecting, just because
15 of the fact that, you know, in order to determine the state of that service,
16 you're wanting to look at the specific devices and basically just -- it
17 ties -- selecting components to determine the state of the service is tied back
18 into diagnosing the cause, subsequently.

19 JUDGE BARRETT: The claim says "selecting one or more network
20 components on which the service depends."

21 MR. ALI: Right.

22 JUDGE BARRETT: Okay. So, that's sort of a one-way thing.

23 You know, as a design matter, I am choosing the component, and
24 column 9 --

25 MR. ALI: Column 9 of our --

1 JUDGE BARRETT: -- the service model -- the service model
2 identifies the various components of the data service that enable the service.
3 To me, that's clearly selecting a network component on which the service
4 depends.

5 The mapping limitation talks about -- that's just saying that this
6 service component is mapped to a service parameter, right? Or mapped to a
7 service.

8 Monitoring the state -- well, there's clearly monitoring going on of
9 these elements, and I just don't see where you argue that when the state of
10 the service changes, determining the cause of the change.

11 MR. ALI: Well, I mean, the --

12 JUDGE BARRETT: Where is that in the -- where is that in the brief?
13 Because --

14 MR. ALI: It's addressed briefly --

15 JUDGE BARRETT: -- you say, for similar reasons --

16 MR. ALI: Right.

17 JUDGE BARRETT: That is, because neither provide any awareness
18 over the state of the service.

19 MR. ALI: Right.

20 JUDGE BARRETT: That's not saying that, you know, what's been
21 obvious to monitor the causes --

22 MR. ALI: Right. Well, we could have phrased that differently, but
23 essentially, there, what we're trying to say is, you know, awareness over the
24 state of the service being awareness over the -- the devices that make up the

1 service, awareness of the parameters that are coming out of those devices; in
2 other words, a way of going back in and looking at those devices.

3 JUDGE BARRETT: But you're not arguing -- I mean, that's not what
4 that says. You're just saying there's no awareness of the state, and there is an
5 awareness of the state, because you're measuring it. You're measuring these
6 values.

7 So, I don't see an argument here that says it wouldn't have been
8 obvious to determine the cause of the change, because somehow you're
9 not -- don't have an awareness of the state. I mean, I don't see that argument
10 in the brief.

11 MR. ALI: Fair enough.

12 You know, again, I would say that, you know, our arguments in the
13 brief emphasize the selection, and I think that what we were trying to get at
14 in terms of describing the selection is the ability of the service manager
15 that's sitting at the top, the one that's determining service level, being able to
16 look at the network components.

17 It doesn't have the ability to select the network components, because it
18 doesn't have the ability to see them, because it's all hidden by the -- by
19 the -- by the plug-ins.

20 JUDGE BARRETT: Selecting can be done by -- by a person, right?
21 Selecting the network components just says these elements correspond to my
22 service.

23 MR. ALI: I would disagree with that interpretation given -- you
24 know, given the way that we describe this in the specification, and I would
25 just say that that's inconsistent with -- with that.

1 JUDGE BARRETT: Well, is there some sort of automatic selecting
2 going on by -- by a -- by a computer or something? I don't see that.

3 MR. ALI: Essentially, once you have your service defined in terms of
4 network components, the service management system is the one that does
5 the selection and goes back in and chooses certain devices to look at.

6 JUDGE BARRETT: It doesn't say -- the service model identifies
7 various components of the data service system that enables service. Isn't
8 that selecting the network components on which the service depends?
9 Somehow there's an identification of which -- which components map to that
10 service.

11 MR. ALI: You could say that possibly from the point of view of the
12 underlying system that is pushing the data up -- our interpretation of the
13 claim language and the references was not consistent with that. So, I would
14 just, you know, say that that -- I guess that's a matter of interpretation.

15 We believe that's an incorrect interpretation, and we'll stand by that.

16 JUDGE BARRETT: Okay.

17 I mean, as to arguments that aren't made in the brief, I mean we don't
18 know what the Examiner would have said if you had made the arguments,
19 and you know, so it's -- we just can't really give weight to arguments that
20 aren't in the brief.

21 MR. ALI: Well, you know, unfortunately, I guess that we can't add
22 arguments now, but you know, just have that context in mind, and you
23 know, if -- if you feel that the brief doesn't adequately address it, then you
24 know, we'll go from there, but we still emphasize those -- those distinctions
25 in terms of the references that are relied on here.

1 JUDGE BARRETT: Is that it for that case?

2 MR. ALI: Yes.

3 JUDGE BARRETT: Any questions?

4 (Whereupon, the proceeding was concluded on Wednesday, June 10,
5 2009.)